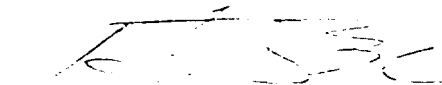


Mr. Michael B. Hayden
June 16, 1995
Page 17

Liberty has acknowledged the careless mistakes it made and will submit to an appropriate sanction. The appropriate context for such sanction is a determination of the merits of the petitions to deny. We urge the Commission to recognize that its actions in withholding decision on the pending applications, while at the same time preventing Liberty from obtaining a judicial declaration of the legality of the "Non-Common Systems" do not advance the interests of Liberty's subscribers, the goals of the Cable Act or the public at large. It only aids and abets the predatory and exclusionary tactics of a monopolist who is manipulating the Commission's procedures to destroy its only competitor. Liberty has, by its own lack of an internal compliance procedure, added fuel to the fire commenced by Time Warner. However, Liberty's mistakes do not justify the punishment sought by Time Warner -- putting Liberty out of business by revoking its right to operate and decimating its credibility in the marketplace. Liberty is in the process of instituting controls through its counsel in an effort to ensure that no facilities are rendered operational in the future unless and until Liberty has received authorization to do so.

In conclusion, Liberty repeats its request that the Commission grant its STAs immediately.

Respectfully submitted,



Howard J. Barr
Counsel for Liberty Cable Co., Inc. 0125

cc: ✓ Arthur H. Harding, Esq.
Regina M. Keeny, Esq.

EXHIBIT 1

Declaration Under Penalty of Perjury

I, Behrooz Nourain, depose and state as follows:

1. I am Director of Engineering for Liberty Cable Co., Inc. I do not believe that I provided a false affidavit in the course of this proceeding, nor has it ever been my intention to do so.

2. Time Warner alleges that, in light of statements I made in my February 21, 1995 affidavit, that my declaration submitted in connection with Liberty's Surreply, filed May 17, 1995, is false. That allegation is misplaced.

3. My February affidavit, which was submitted in order to correct misstatements made in an affidavit submitted by Time Warner, in large party addressed technical matters related to the distribution of video programming in the 18 GHz band. My February affidavit was submitted in connection with federal court litigation relating to Liberty's connection of certain non-commonly owned properties via cable utilizing private property ("Non-Common Systems") and whether those Non-Common Systems can constitutionally be classified as "cable systems" under the Cable Act.

4. Even prior to the commencement of the lawsuits, I was aware of allegations that Liberty's Non-Common Systems involved the provision of "cable service" without a local franchise. It had been decided that we should explore whether any of the Non-Common Systems could be served via 18 GHz microwave and if that were possible to obtain authorization to do so. I proceeded to set the process in motion by performing (or having performed under my direction) line of site studies; initiating the necessary prior coordination process; and, through counsel,

filing applications on November 7, 1994 to establish microwave paths of communications to a number of such properties.

5. I was of the understanding at the time I submitted the February affidavit that the applications to establish microwave paths to buildings served in the Non-Common Systems configurations, and only those applications, were being opposed by Time Warner. The locations we proposed to serve by microwave are presently served by the Non-Common System configuration and have never been served by microwave. I had no knowledge that Time Warner was filing oppositions against all of Liberty's applications for microwave authorizations, including the applications to provide service to the locations Liberty was serving without authority, until April of 1995, as I stated in the Surreply.

6. While perhaps I should have discussed this in the Surreply, during the preparation of that document I was focusing on the locations discussed in that document, none of which are or have been served by a Non-Common System via microwave had been opposed by Time Warner. I was unaware until that time that Time Warner had been systematically opposing all Liberty applications.

7. My responsibilities at Liberty have at all times pertained only to the technical aspects of Liberty's operations. I am not now, nor have I ever been, involved in Liberty's day-to-day business and/or legal affairs.

8. Page three of the Surreply, filed May 17, 1995, refers to my mistaken assumption of the "grant of the STA requests." Any reading of my statements in that document as being in reference to the May 4, 1995 STA requests strains the meaning and intent of my statements. It

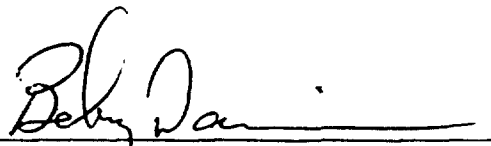
was not my intention therein to refer to the STA requests which had only recently been filed on May 4, 1995. Those requests were filed after operation of the paths was commenced.

9. Rather, at the time the paths were turned on, I was under the assumption that each was covered by a granted request for special temporary authority. It was to those STA requests that I was referring. Liberty over the years has filed numerous STA requests, and obtained grants thereof, permitting commencement of operation on microwave paths prior to Commission action on the underlying applications. I was acting under the assumption that this procedure, i.e., the filing and grant of STA requests, had authority to render the paths operational at the time it do so. As I discovered too late, my assumption was incorrect; that procedure had not been followed and Liberty had never filed for or received special temporary authority to operate the paths in question.

10. Again, I believed at the time the paths in question were rendered operational that Liberty had the authority to commence operation. I am aware of the Commission's rule prohibiting operation of an Operational Fixed Microwave Service facility prior to the receipt of authorization therefore and I regret that these violations have occurred.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 6/12/95


Behrooz Nourain

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EXHIBIT 2

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121994-D1

**PRIVATE CABLE AGREEMENT
FOR CO-OPERATIVES AND CONDOMINIUMS**

1. **Parties.** This Agreement is between Liberty Cable Company, Inc., 575 Madison Avenue, Third Floor, New York, New York 10022 (the "Operator") and 225 East 74th Corp. (the "Owner"), which owns and manages a residential building at 225 East 74th Street, New York, New York (the "Property").

2. **Authority.** Operator and Owner each affirm and represent to the other that (a) each is properly organized to do business in the State of New York, (b) when executed, this agreement shall be valid and binding on both parties, and (c) each person executing this agreement on behalf of a party has due and proper authority to bind such party.

3. **The System.** Owner grants Operator the right to install, operate and maintain equipment at the Property necessary to receive and distribute satellite television programming (the "System") to all 70 apartments in the Property. Operator shall, at its own expense, install, operate and maintain the System and keep it in good repair. Operator shall be entitled to connect its receiver to the nearest common area electrical outlet and Owner shall provide electricity for the System. The System (including converters but excluding internal apartment wiring and existing wiring within the Property) shall remain the personal property of Operator and may be used by the Operator to serve other properties. Converters not purchased by any subscriber remain the property of Operator and must be returned upon termination of this Agreement.

4. **Installation.** Operator shall, continuously and in a good and workmanlike manner, and at Operator's sole cost and expense install the System within one hundred twenty (120) days from the date hereof subject to the ability of Operator to obtain its signal from an adjoining property owner, without any judicial or governmental interference or additional conditions or restrictions other than the license obtained by the Operator in ordinary course. Operator shall not damage the Property or injure anyone. Plans for the installation of the System are subject to the Owner's approval which shall not be unreasonably withheld or delayed. Simultaneously with the delivery of the installation plans to Owner, Operator shall deliver a certificate of insurance covering the initial installation work. Operator shall, during the installation period, maintain a constant presence at the Property and a good faith effort to obtain, as required, access to any apartment at the convenience of the owner of each apartment in order to effectuate the installation. All installations by Operator shall be installed in conformity with (i) the Plans and (ii) with building decor, and (iii) the general standards of Owner relating to work to be performed in the Property. Owner shall notify Operator of any property damage or damage to the Building within ten (10) days after Owner discovers such damage. Operator shall repair such damage to Owner's reasonable satisfaction within ten (10) days after Operator's receipt of Owner's notice. Owner will use reasonable efforts to assist Operator in obtaining efficient and quick installation and shall, without charge therefor, provide at least one service person to accompany Operator into apartments as installation proceeds. Operator may commence billing after Operator has demonstrated a good faith effort to complete the installation in each apartment and has given notice to each tenant or unit owner of the availability of Operator's signal to every residential occupant of the Property, but in no event until after the System is operational and the signal quality meets the requirements of Article 8 hereof.

5. **MATV.** Operator shall use the existing master antenna television system ("MATV"), if any, owned by Owner as part of the System if the MATV is suitable for such use as determined by Operator. If Operator elects to use the MATV, Operator may, at its own expense, upgrade, modify, repair and maintain the MATV. Owner retains title to the MATV, any improvements to the MATV, and to the cable to be used within the Property to distribute cable television service.

6. Programming. Operator will provide the programming substantially as described in the annexed Programming Schedule (the "Programming"). Subject to the requirements of law, Operator shall have sole discretion with respect to the selection, distribution and/or pricing of the Programming and related equipment except as set forth in this Agreement and in the Programming Schedule. The programming shall be comparable to the programming offered by the franchised cable television operator in the area and to the programming offered by Operator at any other property in the area. Owner and Operator agree that the provisions of Article 16 hereof shall apply if Operator is unable or unwilling to meet the standards of cable service (including equipment, new and state of the art technology, inter-activity and programming) provided generally by the franchised cable television operator during the term of this Agreement to any other property in the neighborhood of the Property. Owner will sign authorizations of access to serve and such other documents (at no cost or liability to Owner) as may be reasonably required to provide programming at the Property.

7. Basic and Premium Cable Service. Operator will provide Basic Cable Service as described in the Programming Schedule to all residential dwelling units of the Property. The building superintendent shall receive free cable service (basic and general audience premium channels) and one converter box. The Owner will pay the Basic Cable Service Fee to the Operator in advance on the first day of each month (pro-rated for the month in which installation is completed) as set forth in the Programming Schedule. Operator shall have the right to charge or contract separately with any tenant or unit owner for premium services not sold in bulk to Owner and for other services, replacement of converter boxes and/or remotes, etc. in amounts which shall always be less than that charged for comparable services by the franchised cable television operator. To the extent apartments are later combined or separated, Basic Service charges shall be appropriately recast.

8. Signal Quality. The System shall provide a video signal comparable to the signal quality of cable television systems as required by the rules and regulations of the Federal Communications Commission.

9. Service Calls. Operator's response to requests for service or repair will, if possible, be on a same-day basis but in no event later than one working day after the receipt of such request. Except for legal holidays, the Operator's personnel will make service and repair calls on weekdays from 9 a.m. to 9 p.m. and on Saturdays from 9 a.m. to 5 p.m., as required. During the first thirty (30) days after the inception of service, service and repair calls will be made at any time, 24 hours a day. Any failure affecting a group of more than ten (10) subscribers will be responded to within 24 hours on an emergency basis. The Operator will follow a reasonable outage credit policy comparable to that of the franchised cable television operator.

10. Exclusivity. Owner promises that, except as required by law for the franchised cable television company or any other video distributor, no other pay or cable television service will be distributed at the Property.

11. Security. The Owner will provide the same security for the System as it provides for the Property in general and will not knowingly allow unauthorized persons to move, interfere, or make connections with the System.

12. Term. The term of this Agreement is approximately ten (10) years from the date of execution and delivery of this Agreement, to end on the last day of the month to occur ten years from the date service commences, which shall be memorialized by a commencement date letter executed by the parties hereto upon completion of installation and which letter shall detail service options elected by Owner. Owner shall have the right, however, on the fifth anniversary of the commencement date, and for a six month period thereafter, to terminate this Agreement on ninety days prior written notice, which notice may be given at any time during such period. Either party may, at the end of the stated term, terminate this Agreement thereafter at any time on six (6) months prior written notice. Operator shall have sixty (60) days following termination of this Agreement to remove all components of the System.

13. Owner's Reports. Owner will use its best efforts to promptly report to Operator any problems with the System or any construction activity which could affect the System.

14. Indemnity. Operator shall indemnify and hold Owner harmless from any and all claims, damages or expenses arising out of the installation, operation or maintenance of the System or the Access Claim described below. Operator shall control and pay for the defense of such claims. Operator may settle such claims subject to Owner's consent which shall not be unreasonably withheld or delayed. Owner may, but is not obligated to, participate in the defense of such claims at its own expense. Owner agrees that it shall not retain separate counsel (for purposes of the indemnity herein set forth) so long as Operator is not in default of its obligation to defend claims as may be made under this Article 14.

15. Defense of Access Claim. Operator shall, at its own expense, defend against any claim made by the franchised cable television company for access to the Property by operation of law (the "Access Claim"). Operator shall control and pay for the defense of the Access Claim. Operator may settle the Access Claim subject to Owner's consent which shall not be unreasonably withheld or delayed. Owner may, but is not obligated to, participate in the defense of the Access Claim at its own expense.

16. Cancellation For Cause. Owner may cancel this Agreement on ninety (90) days written notice if Operator is then in default, beyond the expiration of the notice and cure period hereinafter set forth, in performing the material obligations of this Agreement. Owner will specify the default in writing to Operator and Operator will have sixty (60) days in which to cure or to commence (and then to continuously and diligently complete any required work) to cure the default. If the default is not cured within the sixty day period or if Operator is not then diligently attempting to effectuate such cure, Owner may then send the notice of cancellation, which shall take effect ninety days following the date such default notice was originally given.

17. Insurance. Operator shall provide Worker's Compensation Insurance for its employees, including all legally required employee benefits, and require such Worker's Compensation Insurance for the employees of all contractors and subcontractors. Operator shall maintain comprehensive liability insurance, including contractual liability, in the amount of \$2,000,000 covering all operations of Operator and its contractors and subcontractors. Operator shall, upon request, furnish Owner with certificates of the foregoing insurance.

18. Compliance. Operator will comply with all applicable laws, codes or regulations.

19. Force Majeure. Neither party shall be liable for failure to perform all or part of this Agreement by reason of an Act of God, labor dispute, non-delivery or inadequate performance by program suppliers, installation contractors or equipment suppliers, breakdown of facilities, microwave or other electrical or physical signal interference, fire, flood, legal enactment, governmental order or regulation, or any other cause beyond their respective reasonable control.

20. Assignment. This Agreement shall benefit and be binding on the respective assigns, transferees and successors of the parties. Operator may assign this Agreement only to a responsible company which at the time of assignment has the resources necessary to perform under this Agreement.

21. Confidentiality. This Agreement will remain confidential and shall not be disclosed to third parties except as required by law. Owner will use reasonable efforts to not make or distribute copies of this Agreement to third parties. Operator recognizes that Owner is required to and may disclose the contents of this Agreement and make it available for inspection to tenants or unit owners provided, however, that such tenant or unit owner agrees to keep this Agreement and its terms confidential.

22. Entire Understanding. This Agreement contains the entire understanding of the parties and may not be modified except by a writing signed by each of the parties.

23. Notices. All notices required or permitted under this Agreement shall be delivered by certified or registered mail, postage prepaid, with return receipt requested, at the address first written above, and shall be deemed given on the date shown as the delivery date on the return receipt.

225 East 74th Corp.

By:

Peter Kochenthal

Title:

President

Date:

12/19/94

Liberty Cable Company, Inc.

By:

[Signature]

Title:

President

Date:

12/20/94

PROGRAMMING SCHEDULE
(Rates and Programming)
(Part A)

Basic Cable Service**Initial Basic Cable Service Fee:¹**

\$12.00 per unit times 70 units = \$840 per month

Premium Cable Services

- (a) **First Premium Tier:** SportsChannel and NewSport (in bulk) at \$3.00 per unit per month (subject to increase no more than once a year), which option Owner has not elected prior to execution hereof; such price will be available to Owner for a six-month period following the Commencement Date.
- (b) **Initial Individual Premium Rates:²**
\$12 per month for any one (1) service;
\$10 per month per service for any two (2) services;
\$8 per month per service for any three (3) or more services.
- (c) **Initial Bulk Premium Option:** If Owner elects within the first year of execution of this Agreement to provide the five (5) general audience premium channels to all units, then, in lieu of individual subscriber charges for premium services, Owner will pay an additional monthly fee of \$34.95 per month times 70 units along with the Basic Cable Service Fee.

Converters:

First converter provided at no charge.

Each additional converter may be rented from Operator at an initial charge of \$10 a month.

Installation Fee:

Installation will be at no charge to any tenant/shareholder at the time of initial installation, but all new installations thereafter will incur a charge of \$29.95 per apartment, as same may be increased from time to time, with no obligation of Operator to perform custom installation work.

¹ The Cable Service Fees (inclusive of basic and first premium tier service) will increase by no more than six percent (6%) per year provided, however, that such fees will always be at least fifteen (15%) percent less than the rates regularly charged by the franchised cable television company serving the area in which the building is located for comparable programming. The cable service fees (as increased from time to time) remain fixed regardless of the number of television sets in any unit. Operator shall have the right to increase its costs (for Basic Service only) to Owner (independent of the 6% restriction set forth above) only on a direct reimbursement basis if Operator is required to pay any broadcaster for "retransmission consent" as may be permitted under federal law.

² Except for Bulk Premium Option, premium service requires installation of converter and payment directly from

subscriber to Operator. Monthly rates do not include premium services available only on a bulk purchase basis.

PROGRAMMING SCHEDULE

(Part B)

Basic Service

Channel 2 (WCBS) - New York
 Channel 4 (WNBC) - New York
 Channel 5 (WNYW) - New York
 Channel 7 (WABC) - New York
 Channel 9 (WWOR) - New York
 Channel 11 (WPIX) - New York
 Channel 13 (WNET) - New York
 The Sci-Fi Channel
 The Family Channel
 WGN - Chicago
 Lifetime
 Home Shopping Network
 Video Hits One (VH-1)
 Cable News Network (CNN)
 CNN Headline News
 ESPN
 ESPN II
 Turner Broadcasting System (WTBS)
 Arts & Entertainment (A&E)
 Madison Square Garden (MSG)
 The Nashville Network (TNN)
 CUNY TV ¹
 Financial News Network/CNBC
 Court TV
 The Travel Channel
 UNTV
 The Discovery Channel
 The Cartoon Channel

Channel 21 (WLIW) - Long Island
 Channel 25 (WNYE) - New York
 Channel 31 (WNYC) - New York
 Channel 41 (WXTV) - New York
 Channel 47 (WNJU) - New Jersey
 C-SPAN
 C-SPAN II
 USA Network
 Madison Square Garden II (MSG II)
 Music Television (MTV)
 Nickelodeon/Nick at Night
 Turner Network Television (TNT)
 The Weather Channel
 E! Entertainment Channel
 International Channel
 American Movie Classics (AMC)
 Building Bulletin Board ¹
 Building Security Channel ¹
 The Preview Guide
 Pay-Per-View Preview Guide
 Comedy Central
 Black Entertainment Television
 KTLA - Los Angeles
 Crosswalks ²
 WSBK - Boston
 QVC
 Bravo
 The Food Channel

* * * * *

General Audience Premium Channels

Home Box Office
 Cinemax
 The Movie Channel
 Showtime
 Disney Channel
 SportsChannel ³
 NewSport ³

Special Interest Premium Channels

TV Japan
 The Playboy Channel
 Spice (Pay-Per-View)
 Pay-Per-View (Viewer's Choice One)
 Pay-Per-View (Viewer's Choice Two)

¹ Additional terminals and cameras (and at an additional expense) required to activate these channels.

² Availability subject to compliance with the Cable Television Consumer Protection and Competition Act of 1992.

³ Available in the Sports Premium Tier.

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
LIBERTY CABLE COMPANY, INC.,
SIXTY SUTTON CORP. and BUD HOLMAN, : 94 Civ. 8886 (LAP)
Plaintiffs, : Hon. Loretta A. Preska
v. :
THE CITY OF NEW YORK, RALPH A. BALZANO, :
Commissioner of Department of Informa- :
tion Technology and Telecommunications, : AFFIDAVIT OF
THE NEW YORK STATE COMMISSION ON : RICHARD AURELIO
CABLE TELEVISION, WILLIAM B. FINNERAN, :
GERARD D. DIMARCO, BARBARA T. ROCHMAN, :
DAVID F. WILBUR, and JOHN PASSIDOMO, :
Defendants. :

----- x
STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RICHARD AURELIO, being duly sworn, deposes and says:

1. I am the President of the Time Warner New York City Cable Group, which has management oversight of several cable television companies holding franchises in all or parts of four of the five boroughs of New York City. I have been a cable television executive since 1979. I directed the franchising operations of Warner Amex Cable (one of Time Warner's corporate predecessors) and was responsible for Warner Amex Cable's relationships with governments at federal, state, and local levels. Prior to my involvement in the cable television industry, I served as a political reporter and news editor of Newsday, press secretary and administrative assistant to Senator Jacob K. Javits, and Deputy Mayor of New York City under the

33. Here are some examples of Liberty's practices that prevent or discourage tenants from receiving franchised cable television service:

(a) A typical Liberty contract (an example of which is attached as Exhibit B to the moving affidavit of plaintiff Bud Holman, dated December 19, 1994) purports to be "exclusive" and is 10 years in duration. Liberty's contracts generally give it the right to resist (in the name of the landlord) attempts by a franchised cable operator to install or upgrade its cable facilities and to control any litigation relating to franchised cable access to the building. (Liberty-controlled landlords consequently are always represented by Liberty's long-standing attorney Mr. MacNaughton, as are Sixty Sutton Corp. and Bud Holman in this action.)

(b) Liberty uses its control to obstruct efforts by Time Warner to upgrade its cable facilities (in accordance with its franchise obligations) to enable Time Warner to offer improved service to tenants. Liberty initiates and defends (in the name of its landlords) proceedings in the courts and before the NYSCCT for the purposes of obstructing such upgrade work and rendering inoperative the state cable access statute, so that Liberty can avoid having to meet effective competition in the buildings under contract to it. See, for example, Matter of 86th Street Tenants Corp. v. New York State Commission on Cable Television, Index No. 105358/93 (Supreme Court, New York County, December 23, 1993) (Ciparick, J.) (Exhibit G hereto), rejecting one of Liberty's many efforts to thwart access to franchised cable service.

(c) While Liberty maintains that its obstruction of franchised cable service is done in the interest and at the behest of landlords who oppose installation of "ugly" cable moldings in hallways, Liberty's true anti-competitive motivation became palpable when on January 29, 1993 Liberty wrote to the City to object to the prospect of the DTE granting Time Warner waivers from the construction methodology prescribed in its franchise agreements. Such waivers, which are expressly authorized in the franchise agreements, would allow Time Warner to comply with the requests of some landlords that it use alternate methods of upgrading cable facilities not involving the placement of moldings in hallways.

(d) Liberty's contracts -- including that with plaintiff Sixty Sutton Corp. -- usually impose a regime of bulk or building-wide rates for a period of up to 10 years. Under such a contract, the condominium, cooperative corporation, or other building owner pays Liberty directly for service to every apartment unit in the building. The building owner typically passes the monthly cost on to each of the tenants, whether or not he or she has requested or wants Liberty's service. This creates a strong disincentive for tenants to subscribe to franchised cable television service, since tenants must effectively pay for service twice if they exercise that option. See unsolicited letters from a Paragon subscriber at 200 East 89th Street, copies of which are annexed hereto as Exhibit H.

(e) Time Warner does not require New York City landlords or subscribers to enter into long-term exclusive contracts. Sub-

scribers are billed month-to-month and can terminate at any time. Any landlord in New York City is free (so far as Time Warner is concerned) to contract with a private SMATV operator or other unfranchised multichannel video programming distributor. When Time Warner, in response to Liberty's tactics, requested permission from the DTE to offer a highly restricted type of bulk rate contract, Liberty petitioned the NYSCCT to prohibit it. Time Warner's bulk rate contract as approved by the City and the NYSCCT, unlike Liberty's contracts, has many features that protect consumers, and because it can be terminated on three-months' notice (instead of 10 years), is pro-competitive.

(f) In those Manhattan buildings where Liberty negotiates the right to install its facilities but is unable to obtain a bulk rate clause from the building owner, most tenants choose to retain their franchised cable service. In some New York City apartment buildings owned by the Milstein family, which also owns Liberty, Liberty was the sole provider of cable service for many years due to the persistent refusal of the Milsteins to grant access to TWCNYC or Paragon in accordance with Executive Law § 828 even in the face of orders of entry issued by the NYSCCT. Many residents of these Milstein-owned buildings complained bitterly about their dissatisfaction with Liberty's service and expressed the desire to receive franchised cable television service. Several examples of such expressions by tenants of Milstein-owned buildings are annexed hereto as Exhibit I, and they attest eloquently to the consequences

of allowing a cable operator like Liberty to operate totally outside the jurisdiction of federal, state, and city regulatory authorities.

(g) In certain Manhattan buildings Liberty has attempted to cut off franchised cable service to all tenants and switch them to Liberty's service, even when some tenants have not requested to terminate their franchised service and do not wish to do so. In other Manhattan buildings Liberty converts and appropriates for its own use large portions of Time Warner's cable, moldings, junction boxes, and similar cable facilities which were installed at great expense to Time Warner, resulting in damage, interference, and degradation in the quality of service to the remaining TWCNYC and Paragon customers. This conduct also compromises Time Warner's ability to comply with FCC signal leakage regulations which exist to prevent potentially dangerous interference with air traffic signals (which often operate on the same frequencies as cable systems). Since Liberty remains unregulated, Liberty does not care.

(h) Time Warner sometimes has difficulty getting timely access to Liberty-controlled buildings in order to service those tenants who continue to subscribe to franchised cable service. Liberty has always been extremely secretive about its methods of operation (presumably because of its systemic illegality), and has arranged for doormen in buildings Liberty can control to turn away TWCNYC and Paragon technicians attempting to complete service calls, unless an "escort" from Liberty happens to be available. TWCNYC and Paragon have sometimes had to go to court to prevent this kind of obstructive behavior by Liberty, but there are too many buildings in

New York for judicial proceedings to be a cost-effective remedy. Most of the abusive conduct detailed in the preceding pages would not be able to occur if Liberty submitted itself to regulation, as it is obligated to do.

**VI. Liberty's Professed Desire to Be Free of
All Regulation Is Inconsistent with its
Demand for Special Governmental Privileges**

34. If Liberty wishes to offer cable service to the general public and not limit itself to being an operator of private SMATV systems, and assuming Liberty is correct that it cannot practicably extend its service to all residents by point-to-point microwave, Liberty must either obtain authorization to install cable in public rights-of-way or secure the government's power of eminent domain to enable it to install cable on private property. Right now, in order to avoid placing its cable in City streets, Liberty simply trespasses on private property (see Jacobs Aff. ¶ 10).

35. To serve 44 West 96th Street from Liberty's 12 West 96th Street facilities, Liberty laid cable over the roofs of 11 intervening buildings. To provide its cable service to 229 East 79th Street from Liberty's 239 East 79th Street facilities, Liberty laid cable in the rear of several buildings or building lots located on East 80th Street (see Jacobs Aff., Ex. A, pp. 7-8, and June 28 letter supplement). (If Liberty were not concealing from Time Warner the other buildings it is serving illegally, we could most likely give other examples of such unauthorized cross-over configurations.)

Exhibit 4

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-SEN: DI. MURGENLIANU, U O U

Richard Aurotho

President

New York City Group



**TIME WARNER
CABLE**

June 2, 1995

Dear Customer of Paragon Cable:

This letter is in response to the proposal by your Board of Directors to change your cable television service. Because we believe the presentation by your Board is incomplete and, in some important respects, misleading, we are providing the following information to you for your consideration:

YOUR CHOICES: You have three choices: (1) You can maintain your current Paragon service; (2) You can sign a bulk agreement with Liberty Cable, an unregulated operator; or (3) You can sign a bulk agreement with Paragon Cable, a regulated operator under terms approved by the City and State of New York. Each of these choices has advantages and disadvantages.

YOUR RATES: Currently, of 120 units in your building, 111 subscribe to cable service, and the average cost is \$48 monthly. The major advantage of the current service is that it gives you maximum freedom and flexibility to upgrade, downgrade or cancel your service whenever you wish; and it does not force any tenant to pay for cable service even if he or she doesn't want it.

Under the Liberty bulk proposal, five premium services are added to your service at a cost of \$49.95 monthly, but it also requires a \$5,000 upfront cost for a descrambler, representing an additional \$3.47 a month amortized over one year, for an effective rate of \$53.42 a month.

Under the Paragon bulk proposal, the same five premium services (HBO, Cinemax, Disney, TNC and Showtime) are added at a monthly cost of \$52.41, lower than Liberty by \$1.01 a month.

Importantly, the Paragon bulk rate is for one cable hook-up, but according to our records, 34 of the residents of 15 West 81 St. have one cable connection, so their rate would be lower under the Paragon bulk proposal than it

Time Warner Cable New York City Group
1871 Avenue of the Americas New York NY 10020 Tel 212.512.6301 Fax 212.632.6155
A Division of Time Warner Entertainment L.P.

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would be under Liberty.

Thus, from a rate perspective only, the Paragon bulk proposal is advantageous to those with one cable connection, and the Liberty plan is advantageous to those with multiple cable connections.

It should be noted that as a regulated cable operator, Paragon's rate structure is in accord with an important public policy principle -- i.e., that residents with only one cable connection and no premium services should not subsidize the extra cost of providing additional cable connections to residents who want cable and/or premium services on additional sets.

COMMITMENT: Liberty requires a five-year commitment. Paragon requires no long-range commitment, permitting the co-op to cancel its bulk agreement with only a 90-day notice. The Paragon plan is a clear advantage because it gives your members ultimate flexibility to benefit from the newly-emerging telecommunications competition and developments that are sure to occur within the next few years. The argument that Liberty's contract will be cancellable if any other provider delivers a more technologically advanced service is an invitation to prolonged law suits. Moreover, by every legal and scientific standard today, Paragon's current service -- with its interactive capability -- is already more technologically advanced than Liberty's.

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(3)

channels. Liberty, in turn, offers three broadcast signals not carried by Paragon (stations from Chicago, LA and Boston), but it should be noted that Liberty is a defendant in Federal court where it is alleged that Liberty failed to pay thousands of dollars in copyright fees for carrying these signals in violation of Federal law.

REGULATORY PROTECTION: As a franchised cable operator, Paragon customers benefit from the regulatory protection provided by those agencies of the City and State of New York which have the responsibility of making sure Paragon adheres to strict standards on technical, customer service, billing and other issues. Customers have no such protection with Liberty because it is unfranchised and claims to be outside the jurisdiction of the State and City, which are your local regulators.

CONVERTERS: The Board's proposal concludes that since Liberty's signal is unscrambled, there is no need for a converter box and that this represents an advantage. We consider it a serious disadvantage. First, the "advantage" applies only to those residents who have cable capable television sets with the required tuning range and does not apply to any resident who wishes to order pay-per-view movies or events, or who subscribes to certain adult premium channels. Even under the Liberty plan, residents in those categories would need a converter. Our records show that approximately half of the residents in your building regularly use pay-per-view. Thus, considering all the exceptions, this "advantage" is limited to perhaps less than half of your members.

Beyond that, it should be evident from even a cursory reading of all the recent articles on the future of telecommunications that a converter is necessary to provide consumers with the latest unlimited choices, interactive services, and easier access to the information superhighway now emerging. Unlike Liberty, the Paragon system is already interactive, and the other changes are coming soon. A converter is necessary to bring these benefits into your members' homes.

TECHNOLOGY: The microwave technology used by Liberty is inferior to the closed system used by Paragon and is limited in its ability to offer interactive services to the home. Liberty's "open air" system is susceptible to rain, snow and other weather conditions which cause signal interference and degrade picture quality. Paragon's system consisting entirely of coaxial cable and

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fiber optics uses the most advanced and reliable technology in telecommunications today, and its architecture is ready for the new telephony and telecommunications advances which are about to blossom.

CHARACTER: Liberty, a private company, claims to have 30,000 subscribers in New York and New Jersey and is owned by a real estate company with no prior experience in media, entertainment, programming and telecommunications technology. The New York State Cable Commission has found Liberty to be operating a cable system without a franchise in violation of New York and Federal statutory law and has issued a standstill order to prevent further expansion in a manner inconsistent with the applicable statutes. Although Liberty is contesting that order in the courts, as of this date the U.S. District Court has dismissed most of Liberty's claims and has denied its application for a preliminary injunction against enforcement of the standstill order. Additionally, Liberty recently admitted before the Federal Communications Commission that it is in violation of the law by providing its cable services to at least 15 buildings in the New York City area without the required FCC microwave licenses. Liberty, as noted previously, is a defendant in a Federal court suit brought by several motion picture studios for failing to pay appropriate copyright fees in violation of Federal law. By contrast, Paragon and its predecessor companies have held a cable franchise since 1970. Paragon is owned and managed by Time Warner, a public company which is the world's leading media and entertainment company and the nation's second largest cable company, with 1,050,000 customers in New York City alone.

Finally, it must be said that the tenants of 15 West 81st St. have a stake in New York City as taxpayers and citizens who benefit and contribute to its energy and vibrancy. Because Paragon is a franchised operator, it pays a 5% franchise fee to New York City; Liberty pays no franchise fee. Paragon Cable also provides cable service to public schools, fire stations, police stations, public institutions and government offices -- free of charge. Liberty provides none of these services. Time Warner Cable has built public access studios and municipal studios for citizen and city programming and supports them continually. Liberty provides no such support. And Paragon Cable provides universal service throughout its franchise area, making cable available to the poorest neighborhoods, and is specifically prohibited from "red-lining" or "cream-skimming." Liberty has no such universal service obligation and is free to cater to only the City's wealthier residents.

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As you consider this matter, we hope very much you will keep in mind all the advantages which Paragon Cable offers your members as well as our civic contribution to the whole community.

To answer any further questions you may have on this matter, I have offered to attend your Annual Shareholders' Meeting on June 14.

With appreciation for your interest,

Sincerely,



Richard Aurelio

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